

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0126**

State of Minnesota,
Respondent,

vs.

Donald Anthony Jackson,
Appellant.

**Filed November 8, 2021
Affirmed
Frisch, Judge**

Washington County District Court
File No. 82-CR-20-1146

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Bryan, Judge; and Kirk, Judge.*

SYLLABUS

In the context of a speedy-trial analysis, neither the state nor the defendant is responsible for the delay in bringing a defendant to trial when that delay is solely due to public-safety concerns related to the COVID-19 pandemic.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

FRISCH, Judge

Appellant seeks reversal of his conviction for felony violation of a domestic-abuse no-contact order, arguing that the commencement of his jury trial 77 days after he demanded a speedy trial violated the Sixth Amendment to the United States Constitution. Because the district court delayed commencing the trial solely because of the COVID-19 pandemic, was prohibited from conducting jury trials by order of the Chief Justice of the Minnesota Supreme Court, and could not have safely conducted a jury trial at an earlier date, we conclude that no constitutional violation occurred and affirm the conviction.

FACTS

On March 12, 2020, respondent State of Minnesota charged appellant Donald Anthony Jackson with violation of a domestic-abuse no-contact order. The complaint contained allegations that Jackson violated the order four days earlier when he sent threatening text messages to the protected party. Jackson was arrested the following day and remained in custody throughout the proceedings.

On March 20, in response to the COVID-19 pandemic, the Chief Justice of the Minnesota Supreme Court issued an order that prohibited the commencement of new jury trials. *Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency*, No. ADM20-8001 (Minn. Mar. 20, 2020). The Chief Justice extended this jury-trial-suspension order through July 6, except for a limited number of pilot programs. *Order Governing the Operations of the Minnesota Judicial Branch Under Emergency Executive Order Nos. 20-53, 20-56*, No. ADM20-8001 (Minn.

May 15, 2020). The Minnesota Judicial Council then allowed district courts to resume jury trials upon the submission and approval of plans to safely conduct jury trials.¹ *Minnesota Judicial Branch COVID-19 Preparation Plan*, Minn. Jud. Council (May 15, 2020); *June 16, 2020, Judicial Council Meeting Minutes*, Minn. Jud. Council (June 25, 2020).

Jackson invoked his right to a speedy trial at his May 18 omnibus hearing. The district court scheduled an initial trial date of July 6, 49 days after the entry of the speedy-trial demand. When the parties appeared on July 6, the district court had not yet received approval to restart jury trials and therefore found good cause to delay Jackson's trial to August 3, 77 days after the initial speedy-trial demand. The district court explained that it anticipated that it would be approved to restart jury trials by August 3.

The jury trial did in fact commence on August 3 and took place over two days. The jury found Jackson guilty, and the district court sentenced him to 33-months' imprisonment. Jackson appeals.

ISSUE

Was Jackson's Sixth Amendment right to a speedy trial violated?

ANALYSIS

The Sixth Amendment to the United States Constitution provides an accused "the right to a speedy and public trial." U.S. Const. amend. VI; *see also* Minn. Const. art. 1,

¹ The Minnesota Judicial Council has the authority to promulgate administrative policies across the Minnesota judicial branch. *See In re Establishing Judicial Council*, No. ADM-04-8003 (Minn. Dec. 10, 2004) (order). The judicial branch has the authority to ensure the performance of basic judicial functions. *See Clerk of Court's Comp. for Lyon Cnty. v. Lyon Cnty. Comm'rs*, 241 N.W.2d 781, 784 (Minn. 1976).

§ 6. “Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review.” *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

“[T]he central question we must answer when assessing a Sixth Amendment speedy trial claim is this: Did the State bring the accused to trial quickly enough so as not to endanger the values that the right to a speedy trial protects?” *State v. Mikell*, 960 N.W.2d 230, 244 (Minn. 2021). “While the speedy trial right protects the individual interests of the accused, the speed with which an accused must be brought to trial must be considered with regard to the practical administration of justice.” *Id.* (quotation omitted). “Criminal prosecutions are designed to move at a deliberate pace to protect the rights of the accused and to ensure the ability of society to protect itself by allowing for thorough and prepared prosecutions; whether a trial is prompt enough must be assessed in light of both interests.” *Id.* (quotation omitted). “[A]ny inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case.” *Barker v. Wingo*, 407 U.S. 514, 522 (1972). “Accordingly, whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends on the circumstances.” *Mikell*, 960 N.W.2d at 244 (quotation omitted).

In determining whether a defendant’s right to a speedy trial has been violated, Minnesota courts apply the four-factor balancing test set forth in *Barker*. *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker*, 407 U.S. at 530). The four factors are: (1) the length of the delay, (2) the reason for the delay, (3) the defendant’s assertion of his right to a speedy trial, and (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. None of these factors are dispositive; “[r]ather, they are related factors and must be

considered together with such other circumstances as may be relevant.” *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015) (quoting *Barker*, 407 U.S. at 533). “This balancing test allows the court to accommodate the sometimes competing interests between the orderly prosecution of crimes that is fair to both sides and the prompt resolution of the case by trial.” *Mikell*, 960 N.W.2d at 245.

This is not a check-the-box, prescriptive analysis; rather, we assess how the factors interact with each other in a difficult and sensitive balancing process to answer the essential question of whether the State brought the accused to trial quickly enough to avoid endangering the values that the right to a speedy trial protects.

Id. (quotation omitted).

A. Length of the Delay

We begin by considering the length of the delay. Jackson argues that presumptive prejudice occurred because more than 60 days elapsed between the date that he pleaded not guilty and he entered his speedy-trial demand and the date that his trial commenced. “A defendant must be tried as soon as possible after entry of a plea other than guilty. . . . [T]he trial must start within 60 days unless the court finds good cause for a later trial date.” Minn. R. Crim. P. 11.09(b). The supreme court has interpreted this rule “to mean that delays beyond the 60-day limit simply raise the presumption that a violation has occurred and require the trial court to conduct a further inquiry to determine if there has been a violation of the defendant’s right to a speedy trial.” *State v. Friberg*, 435 N.W.2d 509, 513 (Minn. 1989). “We determine whether good cause exists for a later trial date under Rule 11.09 by applying the *Barker* factors.” *Mikell*, 960 N.W.2d at 246 (quotation omitted).

Jackson correctly notes that 77 days elapsed between the date that he demanded a speedy trial and the commencement of his trial. But the “threshold conclusion that a delay is presumptively prejudicial does not end our consideration of the length of the delay in the weighing of the *Barker* factors.” *Id.* at 250. We instead consider the reasons for the delay, noting that “a longer delay may be justified if there are good reasons for the delay.” *Id.*

B. Reason for the Delay

We next consider who bears responsibility for the delay. The parties agree that the delay in this case is solely attributable to the COVID-19 pandemic. They also agree that Jackson’s trial commenced on the earliest possible date that the district court was authorized by the Judicial Council to resume jury trials with adequate safety precautions for all participants, including jurors.

Jackson argues that the state is responsible for the delay because the Chief Justice prohibited the commencement of jury trials until the adoption and approval of adequate safety precautions. We disagree. “[I]f there is good cause for the delay—for instance, a key witness of the State is unavoidably unavailable or the government takes a good faith, well-supported appeal from a pretrial ruling—the delay will not be held against the State.” *Id.* at 251. Here, the circumstances of the pandemic in July 2020 rendered a trial unsafe and did not reflect a deliberate attempt by the state to hamper the defense. Jackson’s 77-day wait after invoking his speedy-trial demand was unavoidable. Accordingly, we hold that neither Jackson nor the state are responsible for the delay in commencing the trial when that delay occurred solely because of public-safety concerns due to the COVID-19

pandemic and when the district court was prohibited from holding a jury trial by order of the Chief Justice.

Indeed, the district court specifically found that good cause existed to delay Jackson's trial because the district court "couldn't have a trial if [it] wanted to" due to the COVID-19 pandemic and concerns about the ability to conduct a safe jury trial. Other jurisdictions have reached the same conclusion: "'The Court's current and continued inability to hold trials in a way that does not put the public, the parties, court staff and counsel at serious risk' is a good-faith and reasonable justification for the delay in this matter." *State v. Rodriguez*, No. 1811005093, 2021 WL 1221461, at *5 (Del. Super. Ct. Mar. 30, 2021) (quoting *United States v. Smith*, 494 F. Supp. 3d 772, 781 (E.D. Cal. 2020)).

Accordingly, the short delay in commencing Jackson's trial pending the implementation and approval of adequate COVID-19 safety measures to protect the participants and the public is not attributable to either party.

C. Assertion of the Speedy-Trial Right

We next consider the nature of the assertion of the speedy-trial right. Although a "defendant's assertion of his speedy trial right is entitled to strong evidentiary weight in determining whether the defendant was deprived of the right," the inquiry "is necessarily contextual." *Mikell*, 960 N.W.2d at 252 (quotation omitted). Minnesota courts consider "other signals in the case to assess whether a demand for a speedy trial is serious," *id.*, and consider "the frequency and force of a demand," which is likely to reflect the "seriousness

and extent of the prejudice which has resulted” from an alleged violation, *Friberg*, 435 N.W.2d at 515.

Here, Jackson asserted his demand for a speedy trial simultaneous with his entry of his not-guilty plea. When Jackson appeared for trial 49 days later, his counsel noted Jackson’s previous entry of a speedy-trial demand, asked for a change in release conditions, and requested the district court to set a jury-trial date. The state asked the district court to find the existence of good cause to extend the trial date “in view of the pandemic, which not only makes trial at this time impractical, it makes it in violation of the Order of the Chief Justice of the Supreme Court who has said that trials shall not proceed at this time, other than in the pilot counties.” The state argued that “a trial simply cannot occur right now due to these unusual circumstances.” Jackson’s counsel did not object to such a finding or otherwise respond to the state’s request or argument. From the bench, the district court found good cause to delay the trial:

I am going to make a finding that, as the specific articulations by [counsel], they are all true. We couldn’t have a trial if we wanted to have a trial today, or Mr. Jackson demanded that he have a trial today. Also, it’s true that our court is not one of the pilot projects. We don’t have the ability to try a case until we’re certified that we’re “COVID-Ready” for social distancing and for protection of jurors and citizens. We have not received that protection or that certification yet. . . . So I am going to find there’s good cause.

Jackson’s counsel then noted that “[t]he rule provides that the trial is to happen within 60 days of the demand at the omnibus hearing [and] we’re at Day 49 right now.” Counsel then stated that “Mr. Jackson does continue to assert his demand for speedy trial.”

We do not question whether Jackson’s demand for speedy trial was serious—Jackson asserted his demand throughout the proceedings. But the context of the demand illustrates that all parties were aware that a safe trial could not occur within the 60-day period because of the pandemic and that the earliest possible date to commence Jackson’s jury trial was August 3. These circumstances weaken the strength of Jackson’s demand for a speedy trial in our overall balancing.

D. Prejudice Due to the Delay

We next consider whether Jackson was prejudiced by the delay, focusing on three interests: “(1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired.” *Mikell*, 960 N.W.2d at 253 (quotation omitted). An impairment of the defense is the “most serious” of these interests and is typically “suggested by memory loss by witnesses or witness unavailability.” *Taylor*, 869 N.W.2d at 20 (quotation omitted).

Jackson argues that he was prejudiced by the delay because he suffered anxiety from oppressive pretrial incarceration during the pandemic. But Jackson concedes that “[i]f a defendant is already in custody for another offense . . . the first two interests [oppressive pretrial incarceration and anxiety] are not implicated.” *Id.*

Here, Jackson was already in custody for other, unrelated offenses. He does not argue that the delay in commencing his trial impaired his defense to the charge. Jackson therefore fails to assert any cognizable prejudice associated with the delay.

E. Balancing the Factors

Finally, we conduct “the delicate and sensitive balancing required to answer” whether the state brought Jackson to trial “quickly enough so as not to endanger the values that the speedy trial right protects.” *Mikell*, 960 N.W.2d at 255. The supreme court, extrapolating from the *Barker* factors, identified “a series of commonsense questions . . . to determine whether the values embedded in the speedy trial right were protected.” *Id.* at 244-45. These questions are:

Who is responsible for the delay? Is the justification for the delay good or bad? Is the length of the delay consistent with, and proportionate to, the justification for the delay? Were the defendant’s interests harmed by the delay itself and did that harm increase as the delay lengthened? Was the defendant serious about getting to trial promptly, which is good evidence that he perceived the delay as harmful?

Id. at 245.

Here, Jackson’s trial did not occur within 60 days following his speedy-trial demand for one reason: a trial *could not* occur within that time period. The order of the Chief Justice and requirements set forth by the Judicial Council recognized that certain safety protocols must be implemented to conduct a safe trial for all participants, including court employees, lawyers, witnesses, jurors, and Jackson himself. Jackson’s trial occurred at the earliest possible date that safety protocols could be put in place, 77 days after he demanded a speedy trial (or 17 days after the expiration of the 60-day speedy-trial deadline).

Neither Jackson nor the state are responsible for this COVID-19-caused delay. The delay was justified by the pandemic. The length of the delay is consistent with, and proportionate to, the justification for the delay. Jackson’s interests were not harmed by the

17-day delay itself. Any harm to Jackson did not increase over the 17-day period. And Jackson did not establish any particular harm associated with the delay before the district court. Accordingly, the 77-day time frame in bringing Jackson to trial did not endanger the values that the speedy-trial right protects.²

DECISION

Jackson's Sixth Amendment right to a speedy trial was not violated when his trial was delayed 17 days beyond the 60-day speedy-trial window because of public-safety concerns related to the COVID-19 pandemic.

Affirmed.

² Jackson, in his pro se supplemental brief, primarily asserts the same speedy-trial argument as counsel, and we do not repeat our analysis of issues related to his speedy-trial demand.

Jackson also summarily claims in his supplemental brief that his due-process rights were violated. This argument appears to stem from his inability to afford the bail bond and his associated pretrial incarceration. This argument is without merit. "The amount of bail to be fixed in a particular case rests within the discretion of the trial court and its determination will not be reversed unless there is a clear abuse of that discretion." *State v. Martin*, 743 N.W.2d 261, 265 (Minn. 2008) (quotation omitted). On appeal, Jackson does not establish any abuse of discretion by the district court, and we discern none. And even if Jackson had established an abuse of discretion, he did not appeal the order setting the conditions of his release. *See* Minn. R. Crim. P. 28.02, subd. 2(2)(a). His due-process bail-bond argument is now moot. *See State v. LeDoux*, 770 N.W.2d 504, 510 (Minn. 2009) ("Generally, issues of bail are considered moot after conviction.").